

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

KANNHA BOUNCHANH,

Plaintiff,

v.

WA STATE HEALTH CARE  
AUTHORITY, et al.,

Defendants.

CASE NO. C19-5171RBL

ORDER

THIS MATTER is before the Court on Defendants'<sup>1</sup> Motion to Dismiss for failure to state a claim [Dkt. # 70]. Pro se plaintiff Bounchanh is a former DSHS and Washington Health Care Authority employee. Bounchanh's amended complaint is unclear and difficult to follow, but it appears that he was either not promoted or was fired. He sued his former employers (and others; there are 43 total defendants) for violating his rights, for failing to accommodate his disability in violation of the ADA, and for bullying and retaliating against him. He also sued the entities that investigating these claims (the BRC and the EEOC) when they determined that they could not substantiate them. He appears to claim they conducted a negligent investigation.

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<sup>1</sup> The moving defendants are the Washington Human Rights Commission, and its employees Sharon Ortiz, Jeremy Page, Idolina Reta, and Cheryl Strobert.

1       The Court previously dismissed Bounchanh’s union, Defendant AFCME [Dkt. # 68]. The  
2 HRC and its individual employee defendants now seek dismissal of Bounchanh’s claims against  
3 them. The HRC argues that it has Eleventh Amendment immunity, that there is no cognizable  
4 claim for negligent investigation, and that Bounchanh has failed to articulate a plausible claim  
5 against any of the HRC defendants—he has not articulated that any named HRC defendant did  
6 anything to him, and he was clearly never employed by the HRC or any of its individual  
7 employees.

8       Bounchanh’s response does not address any of these arguments. He asks the Court to  
9 permit a jury to hear his claims and to view his undisputable and admissible evidence. He  
10 reiterates that, in his view, the HRC did not do a fair thorough, objective and sincere  
11 investigation into his claims about his treatment at the HCA (or the DSHS). He has still failed to  
12 articulate any action by any individual HRC defendant, much less to articulate how it is  
13 actionable under the authorities cited in the Motion to Dismiss.

14       Dismissal under Fed. R. Civ. P. 12(b)(6) may be based on either the lack of a cognizable  
15 legal theory or the absence of sufficient facts alleged under a cognizable legal theory. *Balistreri*  
16 *v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990). A plaintiff’s complaint must allege  
17 facts to state a claim for relief that is plausible on its face. *See Ashcroft v. Iqbal*, 556 U.S. 662,  
18 678 (2009). A claim has “facial plausibility” when the party seeking relief “pleads factual  
19 content that allows the court to draw the reasonable inference that the defendant is liable for the  
20 misconduct alleged.” *Id.* Although the court must accept as true the Complaint’s well-pled facts,  
21 conclusory allegations of law and unwarranted inferences will not defeat an otherwise proper  
22 12(b)(6) motion to dismiss. *Vazquez v. Los Angeles Cty.*, 487 F.3d 1246, 1249 (9th Cir. 2007);  
23 *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001). “[A] plaintiff’s obligation  
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1 to provide the ‘grounds’ of his ‘entitle[ment] to relief’ requires more than labels and conclusions,  
2 and a formulaic recitation of the elements of a cause of action will not do. Factual allegations  
3 must be enough to raise a right to relief above the speculative level.” *Bell Atl. Corp. v. Twombly*,  
4 550 U.S. 544, 555 (2007) (citations and footnotes omitted). This requires a plaintiff to plead  
5 “more than an unadorned, the-defendant-unlawfully-harmed-me-accusation.” *Iqbal*, 556 U.S. at  
6 678 (citing *id.*).

7 On a 12(b)(6) motion, “a district court should grant leave to amend even if no request to  
8 amend the pleading was made, unless it determines that the pleading could not possibly be cured  
9 by the allegation of other facts.” *Cook, Perkiss & Liehe v. N. Cal. Collection Serv.*, 911 F.2d 242,  
10 247 (9th Cir. 1990). However, where the facts are not in dispute, and the sole issue is whether  
11 there is liability as a matter of substantive law, the court may deny leave to amend. *Albrecht v.*  
12 *Lund*, 845 F.2d 193, 195–96 (9th Cir. 1988).

13 Bounchanh’s claims against the HRC defendants are not plausible under this standard.  
14 The HRC itself is entitled to Eleventh Amendment immunity, and Bounchanh has failed to even  
15 hint at any actionable conduct by the named individual HRC defendants through two iterations of  
16 his complaint and a response to a motion to dismiss. There is not common law or statutory claim  
17 for negligent investigation. *See Pettis v State*, 98 Wash. App. 553 (1999). Bounchanh’s claim  
18 that his actual employer(s) bullied him is not legal or factual support for a plausible claim against  
19 the HRC.

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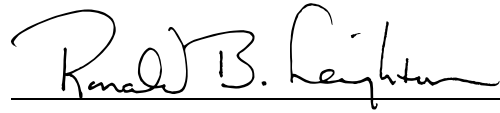
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1 For these reasons, the motion to dismiss is GRANTED and Bounchanh's claims against  
2 the HRC and its individual employees are DISMISSED. Because there is nothing that  
3 Bounchanh could add in a third proposed amended complaint that would change this analysis,  
4 the dismissal is with prejudice and without leave to amend.

5 IT IS SO ORDERED.

6 Dated this 16<sup>th</sup> day of August, 2019.

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9 Ronald B. Leighton  
10 United States District Judge  
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